

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6087 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE D.G.KARIA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

2 to 5 No

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RAJESH BHAGWANBHAI SAIJPAL

Versus

GURUPRASAD MAHAPATRA DISTRICT MAGISTRATE

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Appearance:

MR YATIN SONI for Petitioner  
Mr.A.S.Desai, ADDL.GOVERNMENT PLEADER for Respondent  
No.1,2 and 4.  
MR SUNIL C PATEL for Respondent No. 3

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CORAM : MR.JUSTICE D.G.KARIA

Date of decision: 24/10/97

ORAL JUDGEMENT

By this petition under Article 226 of the Constitution of India, the petitioner has questioned the legality and validity of the detention order dated

25.5.1997 passed by the first respondent in exercise of his powers under section 3(2) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (for short, "the said Act"). It is not in dispute that the petitioner was supplied with the grounds of detention on the same day, i.e. 25.5.1997.

I have heard the learned Advocate for the petitioner, the learned Addl. Public Prosecutor for the respondent-State and the learned Addl. Central Government Standing Counsel, for respondent No.3.

The petitioner has raised several grounds against the impugned order. However, the petition deserves to be allowed on the ground that the representation of the petitioner dated 1.8.1997 was not considered within reasonable time and that there was undue delay and as such the continued detention of the petitioner-detenu is illegal. By amending the petition, it was sought to be averred that the petitioner had preferred the representation dated 1.8.1997 to the Secretary, Food and Civil Supplies Department, Government of India at New Delhi by Registered A.D. Post. The said article of registered post was despatched on 20.8.1997. According to the petitioner, it was received by the addressee on 26.8.1997, in the office of the Minister. The representation, however, came to be disposed of, after calling for parawise remarks from the State Government, on 5.12.1997. There is no explanation forthcoming on behalf of the third respondent as to why the representation remained unattended from the date of receipt of the representation, i.e. 26.8.1997, till 1.9.1997, the day on which the parawise comments of the State Government were called for. Thus, there being delay in dealing with and disposing of the representation of the petitioner, the valuable right of the petitioner under Article 22(5) of the Constitution of India is violated. The petition thus deserves to be allowed.

In the result, the petition is allowed. The impugned order of detention of the petitioner is quashed and set aside. The petitioner-detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is accordingly made absolute.

Direct Service permitted.

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